

### **REMARKS / DISCUSSION OF ISSUES**

Claims 1 – 19 are pending in the application.

In the present amendment, claims 1, 7, 11 and 17 are amended. The support for the claim amendment may be found in Applicant's specification, page 10, lines 10 – 25. No new matter is entered.

The Office Action of July 28, 2008, objects to the Abstract. In the present amendment, the Abstract is amended to obviate this objection. Withdrawal of the objection to the Abstract is respectfully requested.

The Office Action also objects to the Specification. In the present amendment, the Specification is amended to obviate this objection. Withdrawal of the objection to the Specification is respectfully requested.

#### **35 U.S.C. 112**

The Office action rejects claims 11 and 17 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the present amendment, claims 11 and 17 are amended to obviate this rejection. Withdrawal of the rejection of claims 11 and 17 under 35 U.S.C. 112 is respectfully requested.

#### **35 U.S.C. 102**

The Office action rejects claims 1 – 4, 7, 9 and 10 under 35 U.S.C. 102(b) over Heemskerk, U.S. Patent 6,031,815.

Applicants submit that for at least the following reasons, claims 1 – 4, 7, 9 and 10 are patentable over Heemskerk.

For example, claim 1, in part, requires:

*"the control logic data comprising executable code or instructions."*

Heemskerk discloses that the demodulation means 32 is arranged for distinguishing the type of information read out: information blocks, address information

and auxiliary information (column 7, lines 27 – 30), and that the address information is applied to the system controller for positioning the reading unit 31 and the auxiliary information may be applied to the system controller and used for releasing the information blocks (column 7, lines 32 – 35). However, Heemskerk does not teach or suggest that any of these types of information comprising executable code or instructions, as claimed. Applicant submits that the address information disclosed by Heemskerk, relates to the addresses of the sectors (column 4, lines 33 – 43), but it does not have any executable code or instructions. Although the system controller uses the data from the address information as input for positioning the read/write head, the input does not contain any executable code or instructions that are to be carried out by the system controller. Applicant further submits that the auxiliary information disclosed by Heemskerk, relates to the information, such as a decoding key, access code, or watermark (column 7, line 42 to column 8, line 16), but it does not have any executable code or instructions either. Although the system controller uses the data from the auxiliary information as a key for accessing the information blocks, the key does not contain any executable code or instructions that are to be carried out by the system controller. Applicant submits that the address information and auxiliary information are just input data, they are not executable code or instructions. Therefore, Heemskerk fails to disclose the claimed feature: the control logic data comprising executable code or instructions.

In view of at least the foregoing, Applicant submits that claim 1 is patentable over Heemskerk.

Similarly, independent claim 7, in part, requires:

*"the control logic data comprising executable code or instructions."*

Applicant essentially repeats the above arguments for claim 1 and applies them to claim 7 pointing out why Heemskerk fails to disclose the above claimed feature. Therefore, claim 7 is patentable over Heemskerk. Claims 2 – 4, 9 and 10 are also patentable because they at least respectively depend from claims 1 and 7, with each claim containing further distinguishing features. Withdrawal of the rejection of claims 1 – 4, 7, 9 and 10 under 35 U.S.C. 102(b) is respectfully requested.

**35 U.S.C. 103**

Under 35 U.S.C. 103(a) the Office Action rejects claims 5, 6 and 8 over Heemskerk in view of Nerlikar, U.S. Patent 5,905,798; claims 11 – 14, 17 and 19 over Heemskerk in view of O'Connor, U.S. Patent 5,745,568; claims 15 and 16 over Heemskerk in view of O'Connor and further in view of Nerlikar; and claim 18 over Heemskerk in view of O'Connor and further in view of Tavor, U.S. Patent 6,070,154.

Applicant submits that none of the cited secondary references can cure the defect present in Heemskerk as discussed above for claim 1.

Independent claims 11 and 17 are patentable because each of them also requires, in part, the similar claimed feature:

*"the control logic data comprising executable code or instructions,"*

as in claim 1 discussed above. Claims 5, 6, 8, 12 – 16, 18 and 19 are patentable because at least they respectively depend from claims 1, 7, 11 and 17, with each claim containing further distinguishing features. Withdrawal of the rejection of claims 5, 6, 8 and 11 – 19 under 35 U.S.C. 103(a) is respectfully requested.

**Conclusion**

In view of the foregoing, Applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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